

CHAPTER 43-02-02.1
UNDERGROUND INJECTION CONTROL PROGRAM

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43-02-02.1-01. Definitions.

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
3. "Area of review" is used as defined in 40 CFR 146.06.
4. "CFR" means Code of Federal Regulations as of April 1, 1983.
5. "Commission" means the industrial commission of this state.
6. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
7. "Draft permit" is used as defined in 40 CFR 144.3.
8. "Exempted aquifer" is used as defined in 40 CFR 146.04.

9. "Injection well" means a well into which fluids are being injected.
10. "Mechanical integrity" is used as defined in 40 CFR 146.08.
11. "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.
12. "Underground source of drinking water" is used as defined in 40 CFR 146.03.
13. "Well" means a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-02. Classification of Class III injection wells. This classification refers to wells which inject for extraction of minerals or energy, including:

1. Mining or sulfur by the Frasch process.
2. In situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.
3. Solution mining of salts or potash.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-03. Powers and duties. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the underground injection control program for Class III disposal wells. All applications, correspondence, protests, and other communications shall be addressed to the state geologist as follows:

State Geologist
University Station
Grand Forks, ND 58202-8156
(701) 777-2231

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-04. Prohibition of unauthorized injection. Any Class III underground injection is prohibited except as authorized by permit issued under this section. Also, the construction of any well required to have a permit under this section is prohibited until the permit has been issued.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.1-05. Prohibition of movement of fluid into underground sources of drinking water. No owner or operator may construct, operate, maintain, convert, plug, abandon, or conduct any other underground injection activity in a manner which causes or allows movement of fluid containing any contaminant into underground sources of drinking water or which may adversely affect the health of persons. The applicant for a permit has the burden of proof of showing that the requirements of this section are met.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-06. Identification of underground sources of drinking water and exempted aquifers. The commission acting by and through the state geologist shall identify underground sources of drinking water and exempted aquifers in accordance with 40 CFR 144.7.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-07. Permitting.

1. Application for a permit.

- a. Any person who is required to have a permit shall complete, sign, and submit an application to the state geologist.
- b. When the owner and operator are different, it is the operator's duty to obtain a permit.
- c. Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years.
- d. Operators of existing Class III injection wells shall submit a completed application on forms provided by the state geologist no later than four years after approval of the state program.

- e. Operators of new injection wells, unless covered by an existing area permit, shall submit an application within a reasonable time before construction is expected to begin.
2. **Signatories to permit applications.** Permit applications must be signed in accordance with the specifications in 40 CFR 144.32.
3. **Duration of permits.** Underground injection control permits for Class III wells are effective for a fixed term of not more than ten years.
4. **Transfer of permits.** Transfer of a Class III permit to a new permittee must be made in accordance with 40 CFR 144.38.
5. **Modification, revocation and reissuance, or termination of permits.** The commission shall modify, revoke and reissue, or terminate permits as specified in 40 CFR 144.39, 144.40, 144.41, and 124.5, at the request of any affected person or at the commission's initiative. All requests must be in writing and must contain information supportive to the request.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.1-08. Area permits. The commission may issue a permit on an area basis, rather than for each well individually, in accordance with the specifications outlined in 40 CFR 144.33.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.1-09. Draft permits and fact sheets.

1. **Draft permits.** When an application is completed, the commission, acting by and through the state geologist, shall either prepare a draft permit or deny the application. A draft permit must contain all permit requirements.
2. **Fact sheets.**
 - a. A fact sheet must be prepared for each draft permit for a major facility or activity, and in those cases which the commission or the state geologist finds that the draft permit is the subject of widespread public interest or raises major issues.

- b. If a fact sheet is required, it must be sent to the applicant and, on request, to any other person, and must include the items specified in 40 CFR 124.8.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.1-10. Public notice and comment - Requests for hearings - Public hearings - Response to comments.

1. Public notice.

- a. The commission shall give public notice that the following actions have occurred:
 - (1) A draft permit has been prepared;
 - (2) A hearing has been scheduled; or
 - (3) Intent to deny a permit application.
- b. Public notice must be given to allow thirty days for public comment on the draft permit.
- c. Public notice of a public hearing must be given at least thirty days before the hearing.
- d. Public notice must be given by the methods specified in 40 CFR 124.10(c).
- e. Public notices and public notices for hearings must at a minimum contain the information specified in 40 CFR 124.10(d).

2. Public comment.

- a. During the public comment period, any interested person may submit written or oral comments and, if no public hearing is scheduled, request a public hearing in writing, stating the nature of the issues.
- b. All comments must be considered in making the final decision and must be answered when the final permit decision is made.

- 3. **Public hearing.** The commission shall hold a public hearing whenever there is a significant degree of public interest in a draft permit. The commission also may hold a public hearing at its discretion.

4. Response to comments.

- a. The commission, acting by and through the state geologist, shall issue a response to comments when a final permit decision is made. The response must:
 - (1) Specify with provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- b. The response to comments must be available to the public.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02.1-11. Permit conditions. All permits must contain the conditions specified in 40 CFR 144.51 and 144.52.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.1-12. Technical requirements.

1. Construction requirements.

- a. General.
 - (1) Existing wells must achieve compliance with construction requirements prior to permitting or according to a compliance schedule established as a permit condition.
 - (2) New injection wells must be in compliance with construction requirements prior to commencing injection operations.
 - (3) Changes in construction plans require approval of the commission, acting by and through the state geologist.
- b. Class III construction must conform to the requirements contained in 40 CFR 146.32.

2. Corrective action.

- a. All permits must contain the corrective action requirements specified in 40 CFR 144.55.

- b. The state geologist's review of the plan for corrective action shall consider the criteria and factors specified in 40 CFR 146.07.
3. Minimum requirements for operating, monitoring, and reporting on Class III wells are included in 40 CFR 146.33.
4. In authorizing a new Class III well, the commission, acting by and through the state geologist, shall require the submission of all the information specified in 40 CFR 146.34.
5. Prior to granting approval for the operation of a well, the commission, acting by and through the state geologist, shall consider the information listed in 40 CFR 146.34(b).

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-13. Plugging and abandonment.

1. Any Class III permit must include conditions to ensure the well will be plugged and abandoned so that movement of fluids is not allowed either into an underground source of drinking water or between underground sources of drinking water.
2. Any underground injection control permit must include a plan for plugging and abandonment which shall be incorporated into the permit as a condition.
3. Temporary intermittent cessation of injection operations is not considered abandonments.
4. Prior to granting approval for plugging and abandonment, the state geologist shall consider the information listed in 40 CFR 146.34(c).

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-14. Mechanical integrity. A permit for any Class III well or injection project which lacks mechanical integrity must include a condition prohibiting injection operations until the state geologist is satisfied that the specifications for mechanical integrity listed in 40 CFR 146.08 have been met.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-01

43-02-02.1-15. Area of review. The area of review for each injection well or each field, project, or area of the state must be determined according to 40 CFR 146.06.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-01

Law Implemented: NDCC 38-12-02

43-02-02.1-16. Schedules of compliance.

1. The compliance schedule must require compliance as soon as possible, and not later than three years, after the effective date of the permit.
2. If the compliance schedule is set for a duration of more than one year, interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.
3. No later than thirty days following each interim and final date, the permittee shall notify the state geologist in writing of compliance/noncompliance.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-17. Confidentiality of information. The following information cannot be claimed confidential:

1. Name and address of permit applicant or permittee.
2. Information which deals with the existence, absence, or level of contaminants in drinking water.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-18. Authorization by rule. The commission, acting by and through the state geologist, may authorize Class III underground injection by rule as outlined in 40 CFR 144.21, 144.25, and 144.26.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.1-19. Penalties. Any person who violates any provision of this chapter or any permit conditions is subject to the penalties prescribed in North Dakota Century Code sections 38-08-16 and 38-08-17.

History: Effective March 1, 1984.

General Authority: NDCC 38-12-05

Law Implemented: NDCC 38-12-05